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Child & Youth
Advocate

2004/2005

ANNUAL REPORT



The Honourable Heather Forsyth
Minister of Children's Services
Executive Branch
424 Legislature Building
10800 97 Avenue
Edmonton, Alberta
T5K 2B6

Dear Minister:

I am pleased to present you with the Annual Report of the Child and Youth Advocate. This Report covers the fiscal year ending March 31, 2005, for the first part of which your colleague, the Honourable Iris Evans, served as Minister of Children's Services.

Yours sincerely,

John Mould
Child and Youth Advocate



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Notes Regarding our Use of Terms in this Report

The Name of Our Office

With the coming into force of the *Child, Youth and Family Enhancement Act* in November 2004, the “Children’s Advocate” became the “Child and Youth Advocate.” For ease of reading, we have used Office of the Child and Youth Advocate, and its abbreviation OCYA, throughout.

References to Aboriginal Young People

When a discussion applies to a specific group – First Nations, Non-status Indians, Métis, or Inuit young people – we have made that clear. In other instances, we have used the inclusive term “Aboriginal.”



■ 2004-2005 Highlights

The 2004-2005 operating year saw the implementation of the *Child, Youth and Family Enhancement Act* (Enhancement Act). The new legislation had the following impacts on our Office:

- Name change – The Office's title was changed from the Office of the Children's Advocate to the Office of the Child and Youth Advocate (OCYA)
- Formalization of the role of Natural Advocate – The OCYA has, throughout its history, supported and encouraged the use of Natural Advocates.* The new legislation formalized this responsibility under Section 3(3)(d)
- Mandate extended to include PChIP – The mandate of the OCYA was broadened to include the provision of both individual and systemic advocacy under the *Protection of Children Involved in Prostitution Act*
- Quarterly Reports to the Minister – The Enhancement Act continued the previous requirement for the submission of an Annual Report to the Minister, and supplemented this with a requirement for the Child and Youth Advocate to provide the Minister with quarterly reports on the OCYA's "activities and observations."

* For more information on Natural Advocacy as one of the many kinds of advocacy, visit the "About Us" section in the OCYA website at www.gov.ab.ca/advocate.

Work connected with the new Act was a major focus of activity for the OCYA. Advocates participated in the training on the new legislation that was provided to the Ministry's caseworkers, and provided all the training concerning the new OCYA policies and procedures surrounding work with Natural Advocates. OCYA policy was revised to be consistent with the legislation. Additionally, significant OCYA staff resources were committed to reviewing and commenting on the legislation and the attendant regulations and policy.

The information management systems used by the Office were another area of focus during the year. Information systems were developed to support the Community Advocacy Initiative and Systemic Advocacy, and we laid the groundwork for a major redesign of the Office's individual advocacy information management system.

As a follow-up to last year's stated goal of improving communication between the OCYA and the Ministry, further enhancements have been made to the quarterly reporting system. In addition the OCYA played a more active role in the Provincial Enhancement Table.* the major forum for problem-solving and policy development related to intervention and enhancement services.

* *The Provincial Enhancement Table is a forum representing all of the Child and Family Services Authorities (CFSAs) and Delegated First Nations Agencies (DFNAs) as well as the Department's Service Quality Division. The forum's Terms of Reference state, "The overarching purpose of the Table is to bring child intervention expertise from across the Province to work together on improving the outcomes for children and families we serve in Alberta."*

Resources

Organizational Development

During this year, the Office of the Child and Youth Advocate (OCYA) continued to redevelop the structure of the offices and services and develop the supports necessary to deliver advocacy services.

A new position was designed to streamline the intake process. The position was implemented in the North Office, and this position will be evaluated after the first year.

In addition, we added three positions to the Office during the fiscal year to support special projects being undertaken by OCYA, and an additional Advocate was added to the North office with a focus on working with Aboriginal communities.

Budget

The OCYA utilized funds provided to the office as outlined below.

Individual and Systemic Advocacy	\$2,080,000
Systemic Issues Information System	70,000
Children's Advocate Information System	
Technical Review & Design	37,000
Community Advocacy	265,000
Community Advocacy Facilitation System	59,000
Community Advocacy Grants	35,000
Special Projects	
Legal Interests of Children and Youth Harmed in Care	213,000
Speaking for Themselves Pilot	926,000

Information Management

During the year, the OCYA put considerable staff time and effort into developing information systems to support Community Advocacy and Systemic Advocacy. These two systems were designed and implemented in the fiscal year. In addition, we undertook a comprehensive technical review to address the supports required for individual advocacy services that were identified in the previous fiscal year. As a result of the technical review, a project was established to begin the redevelopment of the Children's Advocate Information System (CAIS) early in 2005-06.

Special Projects

Legal Interests of Children and Youth Harmed in Care

In January 2004, the Minister of Children's Services and the Minister of Justice and Attorney General asked the Children's Advocate to consider processes that would protect the legal interests of children and youth who are harmed while in care. Subsequent to the initiation of this project, it was determined that the Public Trustee was in the best position to represent the legal interests of these young people.

Speaking for Themselves Pilot

The Speaking for Themselves project is a partnership between the Children's Legal Education and Resource Centre (CLERC) and Children's Clinical Services at the YWCA's Sheriff King Home. The 3-year pilot project will provide counseling and legal representation for children involved in high-conflict child custody and access cases where there is a history of violence or potential for violence.

Individual Advocacy

Children Served

The OCYA experienced a 9% decrease in the number of individual children served in 2004-05 as compared to the previous year.

Children served in 2004-2005

Active as of April 1, 2004	456
New children in 2004-2005	3279
Total children served in 2004-2005	3735
Active as of April 1, 2005	531

Comparison with children served in previous years

Total children served in 2001-2002	3931
Total children served in 2002-2003	3917
Total children served in 2003-2004	4087
Total children served in 2004-2005	3735

During the fiscal year, the OCYA also responded to 493 General Inquiries.

Referral Source

Self-Referral	762
Third Party	1704
Mandatory	299
Own Motion*	10
Anonymous	12
Total	2787

A single source may refer more than one child or youth, so the number of referrals will not match the number of new children served in the year.

Demographics

Racial Origin

Caucasian	1555
Aboriginal	1429
Unknown	548
Mixed Race	159
Asian	9
Black	25
East Indian	10
Total	3735

Ages of Children Served

0-5 years	694
6-11 years	1080
12-17 years	1732
18-20 years	212
Over 20 years	12
Unknown	5
Total	3735

"She made me feel more confident in myself and the decisions that I make."

a youth

"I would just like to say thank you for your help and support. You made a difference in my life and I really appreciate that. Thanks a million."

an 18-year-old

"She fought for my rights on my behalf."

* Initiated by the Child and Youth Advocate



Community Advocacy Initiative

Over the past year, the Community Advocacy Initiative (CAI) has spent considerable effort, building on its 2003-2004 success. Given the response to the Community Advocacy Workshops, and the initial interest in the Community Advocacy Grant Funding Program, we felt it was important to ensure that CAI policy and procedure was appropriately formulated, documented and consistent with the Initiative's intent. As a result of this year's effort, CAI policy is now well established, along with a Community Advocacy Facilitation System designed to provide timely and accurate information about the activities associated with facilitating community advocacy efforts.

The intent of the Initiative as identified in the 2003-2004 Annual Report has remained essentially the same. The key objectives of the Initiative continue to be to:

- Assist in the development of local and community advocacy initiatives
- Provide support to existing local advocacy programs
- Support local and natural advocates in their advocacy efforts
- Facilitate referrals to local advocacy resources.

Community Advocacy Workshops

As in 2003-2004, demand for the Community Advocacy Workshop remained strong. On-going marketing and 'word of mouth' advertising has resulted in continued demand for the workshop right across Alberta. This fiscal year, approximately 481 community members have participated in the 43 workshops facilitated by the Community Advocacy Initiative. In addition to presentations in the Child and Family Services Authorities, the Office also presented to a Delegated First Nations Agency.

While the goals have remained constant, emphasis has shifted from the provision of Community Advocacy Workshops to the promotion of the Community Advocacy Grant Funding Program. Introduced in the 2003-2004 Annual Report, the Grant Funding Program provides seed money to community-based organizations interested in developing and/or enhancing advocacy services to vulnerable children and their families.

Community Advocacy Grant Funding Program

In the 2004-2005 fiscal year, the Grant Funding Program was fully developed and documented. The CAI began to promote and accept proposals from community agencies. The Initiative received numerous expressions of interest, and received and eventually funded seven proposals.

The grant funding has gone to a variety of different programs and advocacy initiatives across the province. The major part of the funding went to enhance programs within existing advocacy organizations; however, two new organizations were created and assisted through seed funding. Approximately half the funding went to Aboriginal organizations aimed at promoting community, youth, parent, and elder involvement in different advocacy efforts on behalf of Aboriginal children and youth.

Systemic Advocacy

Introduction

As noted in the Highlights section of this Report, involvement in operationalizing the new *Child, Youth and Family Enhancement Act* (Enhancement Act) was a major focus of attention and activity for the Office of the Child and Youth Advocate (OCYA) for the reporting period.

Following proclamation of the legislation, the Office struck a committee to review the Act, and the attendant regulations and policy, from the perspective of its impact on children and youth. As a result, we communicated a series of questions and issues to the Department. The outcome was that a number of the suggestions made by the OCYA were adopted and implemented. The Department indicated it needed more information before reaching a decision on others.

During this reporting year, the OCYA expanded its activity with respect to the management and discussion of systemic issues. The quarterly reporting process provided an opportunity to speak with Child and Family Services Authority (CFSA) and Delegated First Nations Agency (DFNA) representatives on a more frequent basis about issues affecting young people within their jurisdictions. In addition, the Office's participation at the Provincial Enhancement Table provided us with an opportunity to raise potential systemic concerns with Department representatives and with service delivery experts from across the province.

Permanency for Aboriginal Children and Youth

In the 2003-2004 Annual Report, we reported that permanency has been the most persistent and perennial systemic issue identified by the OCYA.

The *Child, Youth and Family Enhancement Act* addresses this issue in a number of significant ways, and the Ministry's intent to pursue permanence for young people in its care is also evident in regulation and policy. Additionally, the Ministry has recognized the importance of working in a more collaborative and meaningful way with Aboriginal groups to address the permanence needs of Aboriginal children and youth in care.

In spite of these changes, barriers remain in achieving permanence for the many Aboriginal children in care.

It may be that the obstacles that prevent progress lie largely outside of the system of enhancement/intervention services, and stem from fundamental conflicts in the relationships between Aboriginal people and mainstream society. While it is beyond the scope of this analysis to fully deal with the effect of conflicting values and worldview, one example is particularly germane to this discussion. Reference is often made to the difference between the collective ethic in Aboriginal communities as opposed to the stress on individual rights in mainstream society. The suppression of individual rights in favour of the common good in Aboriginal cultures arises from the historical fact that Aboriginal peoples "... lived a precarious existence. Unless all potential sources of disharmony and of reduced capacity to contribute skill and energy were kept to a minimum there was a clear danger the group would not survive. The interest of each individual was to a very significant degree subservient to the interests of the group ... [In Aboriginal cultures] the emphasis on the group's survival remains predominant, and the notion of individual rights against the group remains a largely foreign concept ... Their definition of themselves seems to be not as an independent person but as a part of a collectivity."*

Contrast this with the predominant notion in Western industrial society, which can be traced back to thinkers such as Adam Smith, that the individual, along with his or her attendant rights, is sacrosanct.

As with all issues of conflicting values, there is not a right or wrong perspective. The best we might be able to do is assess the utility of a certain value position in achieving desired ends. What is significant is an understanding of how profoundly influential these conflicting worldviews are when trying to establish 'the right thing to do'. The question of whether to move a Aboriginal child from a successful long-term placement in a non-Aboriginal home to a Aboriginal home in the child's community of origin will be largely influenced by which of these value frameworks the decision-maker holds.** The reality is that the *Child, Youth and Family Enhancement Act* is written through the value lens of mainstream society. It may be that Aboriginal peoples will never be comfortable with the Act in light of this fact.

The historic relationship between Aboriginal peoples and mainstream society is also significant in explaining why issues related to permanency planning for Aboriginal children remain intractable. While this relationship has been problematic from a number of points of view, one theme stands out. From

* Rupert Ross, unpublished manuscript.

** For a further exploration of the differences in fundamental values and world view between Aboriginal peoples and Western industrial society see *Native Ethics and Rules of Behaviour* (Canadian Journal of Psychiatry, 1990) written by Dr. Clare Brant, a psychiatrist and a member of the Mohawk Nation, and *Dancing With a Ghost: Exploring Indian Reality*, written by Rupert Ross in 1987 (Butterworths, 1992), a work based largely on the thinking and lectures of Dr. Brant.

the point of view of Aboriginal peoples, there has been a pervasive attempt to force their integration into mainstream society and thus to abandon their traditional culture. The notorious use of residential schools is probably the most concrete and widely acknowledged example of this process. The wide-scale apprehension and permanent removal from their home communities of many First Nations children in the 1960s is seen as an extension of this dynamic. The situation has been exacerbated by the failure of child welfare delivery systems to honour commitments made that Aboriginal children would be encouraged and supported to maintain vital connections with their culture and home communities when placed in non-Aboriginal homes.

The legacy of this relationship is that Aboriginal communities have a collective anger towards mainstream society. There is a corresponding feeling of guilt on the part of the larger society (at least within the sector of human services) in view of the injustices that have been done to Aboriginal people. Neither anger nor guilt is conducive to reasoned problem solving. The anger on the part of Aboriginal peoples leads them to mistrust the intentions of the non-Aboriginal world. Guilt on the part of the non-Aboriginal service delivery system hinders it from taking tough stands on issues where the best interest of individual children is at stake. These hindrances are not easily removed.

While acknowledgement of the value conflicts and of the historical context of Aboriginal/non-Aboriginal relations is important in understanding the lack of movement in resolving the permanency needs of Aboriginal youth in care, there is still an obligation to deal with the issue within the context of enhancement/intervention services.

Aboriginal peoples explain their resistance to confirming permanent placements for Aboriginal children in non-Aboriginal settings on the basis that permanency is a culture bound concept, and that all Aboriginal children have a pre-eminent right to be raised within their own cultures.

The OCYA would argue that there is a vast compendium of both research and anecdotal evidence, drawn not only from Western industrial society but virtually all cultures around the world, which clearly demonstrates that stability and continuity of care are vital elements in the healthy development and attachment of children.* The "Matters to be considered" in the *Child, Youth and Family Enhancement Act* make clear that Aboriginal children and youth, as well as all other children served under the Act, have the right to maintain their cultural heritage and, if at all possible, to be raised within the context of that culture. However, there is no evidence in this Act or any other legally recognized charter or legislation, including the United Nations Convention on the Rights of Children and the Canadian Charter of Rights and

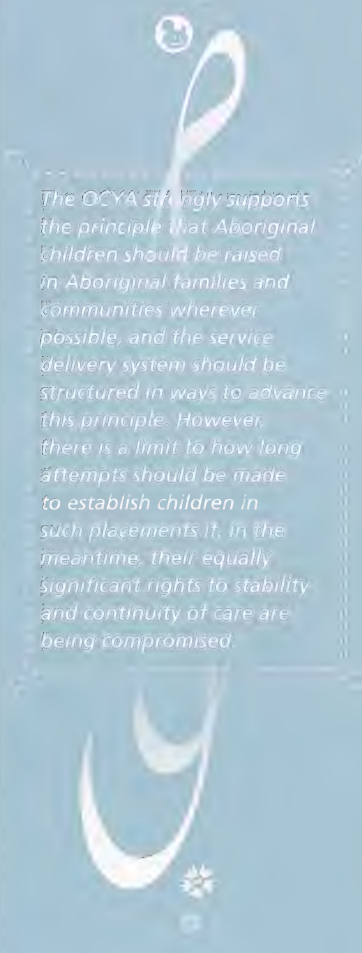
Freedoms, that this right has an inherent priority over a range of other rights including the right to permanent relationships.

The OCYA strongly supports the principle that Aboriginal children should be raised in Aboriginal families and communities wherever possible, and the service delivery system should be structured in ways to advance this principle. However, there is a limit to how long attempts should be made to establish children in such placements if, in the meantime, their equally significant rights to stability and continuity of care are being compromised.

As noted above, the service delivery system has a poor track record in encouraging and supporting Aboriginal children to maintain real connections to family, community, and culture. A starting point in addressing the mistrust that exists between Aboriginal and non-Aboriginal participants in the system of enhancement/intervention services would be to address this insufficiency in concrete terms. This means that both sides of the equation will have to commit resources and attention to making this happen.

All too often, permanency planning, as it has been practised for Aboriginal children, has been a process of loss. Children who have been confirmed in permanent non-Aboriginal placements have often lost (or have never been given the benefit of) a vital connection to their culture and home community. On the other hand, children who have been returned to their home communities and culture after extended placements in non-Aboriginal homes have often lost the support and comfort of continuing relationships with former caregivers. We need to learn how to make permanency planning for Aboriginal children an additive rather than subtractive process from their point of view. To be successful in this will require the development of cooperative, supportive relationships between the adult parties connected to the child.

As we have stated in previous Reports, one problematic aspect of the system's attempts to achieve permanency for Aboriginal children and youth in permanent care is how adoption, as one of the preferred options, has been traditionally conceptualized and practised. This issue was referenced in the Children's Advocate Annual Report for 2002-2003. Aboriginal peoples react negatively to the concept of legal adoption when it is formulated around the



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* The interest in concepts such as attachment can be traced back to the seminal works of John Bowlby and Mary Ainsworth. A review of their work and the subsequent development of attachment theory can be found in "Attachment 101 for Attorneys: Implications for Placement Decisions," Eleanor Willemsen and Kristin Marcel, <http://www.psychology.sunysb.edu/attachment/>. Although not new, the companion volumes *Beyond the Best Interest of the Child* and *Before the Best Interest of the Child*, by Joseph Goldstein, Anna Freud, and Albert J. Solnit, provide a thorough analysis of the implications of the concepts of attachment and stability and continuity of care for child welfare decision-making.

58.1 A Court and all persons who exercise any authority or make any decision under this Act relating to the adoption (or it could be argued any permanency planning decision) of a child must do so in the best interests of the child, and must consider the following as well as any other relevant matter:

- (a) the importance of a positive relationship with a parent, and a secure place as a member of a family, in the child's development;
- (b) the benefits to the child of stability and continuity of care and relationships;
- (c) the mental, emotional and physical needs of the child and the child's mental, emotional and physical stage of development;
- (d) the benefits to the child of maintaining, wherever possible, the child's familial, cultural, social and religious heritage;
- (e) the child's views and wishes, if they can be reasonably ascertained;
- (f) the effects on the child of a delay in decision-making;
- (g) in the case of an aboriginal child, the uniqueness of aboriginal culture, heritage, spirituality and traditions, and the importance of preserving the child's cultural identity.

*Child, Youth and Family Enhancement Act,
RSA 2000 2003 c16 s65*

concept 'as if born to'. They feel it implies ownership of children – something that is antithetical to how they view children. They also feel that adoption creates a legal fiction which discounts or denies the reality of the child's racial and cultural history, and connection to family. There would be real value in exploring and extending more acceptable conceptualizations of adoption such as the Yellowhead Tribal Services Agency (YTSA) Open Custom Adoption Program.*

Whatever permanency planning options are being considered for Aboriginal children (Adoption, Private Guardianship, Kinship Care, long term foster care, etc.), need to honour and support the child's racial and cultural history and his/her connection to community and family.

An argument may be made for a different response to children with lengthy histories in care when they have developed significant attachments to long-term care providers, as opposed to those who have been more recently brought into care. In any event, we need to remember that the ultimate test in making decisions for specific children under the Act is a determination of what is in their individual best interests. While part of this "best interest " is cultural connection and continuity, this is only one of a number of interests that have to be weighed against each other within the context of the child's sense of time.

Policy Definition of Permanency

One of the "Matters to be considered" in the new *Child, Youth and Family Enhancement Act* stresses, in Section 2(b), that the decisions made under the Act must consider "the importance of stable, permanent and nurturing relationships for the child." This has led to a redefinition of the concept of permanency in policy attached to the Act. Section 1.2 of the Enhancement Act

* The Adoption Council of Canada describes the YTSA Open Custom Adoption Program as being "based on the First Nations tradition of viewing the child as a member of a caring community, not just the sole responsibility of parents. Open custom adoption lets families who have had a child put into foster care take part in deciding who might adopt their child, and to continue playing a role in the child's life. The spirit of openness pervades custom adoption: the biological parents stay in touch with the children, and the children benefit by keeping a connection with their birth family, and thus part of who they are." (www.adoption.ca)


Policy Manual states that "Achieving 'permanency' for a child is critical to their healthy development. *Permanency is redefined to include a placement other than in the care of the director.*" (italics ours)

The OCYA supports, without reservation, the intention to achieve permanency for children in care in a timely manner and acknowledges that if this can be done without ongoing involvement of the Director this is preferred. The OCYA would argue, however, that this definition of permanency creates problems in some cases and may undermine the very objective it is intended to achieve.

The new *Child, Youth and Family Enhancement Act* appropriately places increased emphasis on the attempt to have children achieve permanency through a return to birth families, a placement in extended families, or placement with significant others in the child's home community. It can be argued that this focus did not receive sufficient attention in the historical practice of child welfare provincially; however, the new definition and policy direction may contradict best interest decision-making for some particular children and fails in several respects. There are a number of children and youth in care who have been in long-term placements (up to ten and more years) who have developed significant attachments to their caregivers. These young people were also given commitments by the Director, formalized under written Long Term Foster Care Agreements, that they would remain permanently in these placements. The new definition of permanency has meant reconsideration of all such placements and, in some instances, reneging on commitments made by the Director to these children and their caregivers. The irony is that, in attempting to achieve permanence under this new definition, successful long-term care arrangements have been disrupted for some children and youth.

A second concern with the definition is that for some children and youth no viable permanent placement outside of the Director's care appears to be achievable. This means that these children will remain long-term in the care of the Director with no assurance of placement stability and thus, by definition, will never be afforded permanence.


The OCYA intends to pursue the matter in further discussions with the Department, with the intention of seeking a definition of permanency which will enable "stable, permanent and nurturing relationships" for all children involved with enhancement/intervention services, *even those who remain in the care of the Director.*



"... there is a percentage of the 'in-care' population where adoption is not a good fit because the youth has indicated they do not wish to be adopted or the placement is sporadic due to changing life events such as periods of incarceration. In these cases, the permanency plan for the youth is to guarantee the continuity of the relationship with their foster parent who provides a home to return to if they so choose."

New Directions For Permanency Planning: Managing Transitional Change Discussion Paper"

Alberta Children's Services
December 2003



"Our review reinforces the conclusions of the early Oregon Permanency Planning Project: 'Generally we have not found foster care to be characterized by instable placements affording children limited chance for satisfactory adjustments.' The notion that long term foster care is antithetical to permanence must also be further considered."

Barth, Richard P. and Marianne Berry (1987). "Outcomes of Child Welfare Services Under Permanency Planning." *Social Service Review* 61: 71-90.

Restrictive Procedures/Intrusive Measures*

Current policy makes two references to restrictive procedures:

"Use the least disruptive measure. If using a restrictive alternative, keep the child's rights and interests paramount."

(Enhancement Act Policy Manual 1.3.1 – Overview)

and

"If a residential resource or institution proposes to deviate from core standards or regionally approved protocols for using restrictive procedures that include isolation, withdrawal of privileges, etc., this is to be reviewed by the CEO of a Child and Family Services Authority or the Director of a Delegated First Nations Agency.

"Caseworkers will provide all needed information for the review of the restrictive procedure to the CEO or Director ... Caseworkers will document on the child's file that a review occurred and the outcome."

(Enhancement Act Policy Manual 7.11

– Restrictive Procedures Regarding a Child/Youth)

The OCYA would argue that this policy is deficient. Current policy does not do enough to exclude, control, or monitor any restrictive procedure/intrusive measure (other than face down restraints which have been banned). Additionally, core standards referenced in the quote do not exist. Relying on 'regionally approved protocols' provides no assurance of consistency of practice across the system.

Borrowing a definition provided by the Alberta Association of Rehabilitation Centres, from the field of adult rehabilitation services, we understand restrictive procedures/intrusive measures to refer to acts that restrict: "... rights, freedoms, choices or self-determination of individuals receiving services.... [A restrictive procedure/intrusive measure] is a response to situations or behaviours of concern that: restrains individuals' normal range of movement or behaviour; and/or, limits access to events, relationships, privileges or objects that would normally be available to individuals."

Included under this definition are a variety of potential** practices: the use of locked and unlocked confinement, isolation, timeouts or any other restriction of personal freedom (such as the use of one-on-one supervision); use of all

* Those procedures that are called "restrictive procedures" are also referred to as "intrusive measures." Rather than try to determine whether there is an intended distinction between the two, for the purposes of this report we understand them to mean one and the same thing.

** The OCYA wants to make clear that while some of the above-noted restrictive procedures/intrusive measures are common practice in the enhancement/intervention system, we are not suggesting that they all have been or are being used.

types of restraints (physical, mechanical and chemical); loss of personal privacy (such as body and room/residence searches); and use of aversive procedures (such as the use of pain to correct behaviour).

There is considerable literature about the use of restrictive procedures/intrusive measures with children and youth. Some argue that use of these measures is necessary, at times, to ensure the safety of young people and of the staff that are working with them. Proponents also argue that restrictive procedures/intrusive measures can be used as effective treatment modalities. Critics, on the other hand, argue that these techniques are an unnecessary and unwarranted intrusion on the individual rights and freedoms of the children and youth who are subject to their application. It has also been argued that restrictive procedures/intrusive measures are therapeutically ineffective and may have harmful physical and psychological effects.

The OCYA accepts that some use of restrictive procedures/intrusive measures will occur with children and youth in the care of Children's Services. That said, we believe it is imperative that the Ministry declare which restrictive procedures/intrusive measures it will **not** tolerate (such as face down restraints), and that there be an explicit and comprehensive philosophical and procedural framework to guide the application and monitoring of all applications of the techniques that are allowed.

Some of the suggested components of this framework would include:

- A clear delineation of what constitutes restrictive procedures/intrusive measures
- The distinction between their use as part of a planned intervention versus an emergent short-term response to safety issues – along with an outline of what is acceptable within each context
- A thorough consideration of alternatives to restrictive procedures/intrusive measures
- Training of staff in both the alternatives to, as well as the application of, restrictive procedures/intrusive measures
- The development of procedural safeguards to control their use
- Clear expectations regarding documentation and reporting of their use
- Processes for reviewing their use regarding frequency, effectiveness, etc.
- Clearly outlined mechanisms for young people to challenge decisions regarding the use of restrictive procedures/intrusive measures
- An independent review process to examine situations resulting in injury from the use of restrictive procedures/intrusive measures.

"As stated, many authors have called for the need for standards, policies, procedures, and guide lines for the use of seclusion and restraints."

"In order to ensure the safe and proper use of restraints and seclusion, three areas for development were identified from the literature: (a) the need for training; (b) the need for standards of practice; and (c) the need for research."

"With regard to the need for standards, Milliken (1993) stated that guidelines need to be established to help define what to do, when to do it, and how and why to do it 'to ensure that physical restraint is applied only when necessary and in the most appropriate manner possible.'"

The above three comments are from: "A Review of the Literature on Restraints and Seclusion with Children and Youth: Toward the Development of a Perspective in Practice," David M. Day. The Intersectoral/Interministerial Steering Committee on Behaviour Management Interventions for Children and Youth in Residential and Hospital Settings. Toronto, November 2000



Advocacy as Practised by the Office of the Child and Youth Advocate

There are two key assumptions that underlie the original development and the ongoing operation of the Office of the Child and Youth Advocate (OCYA):

- Children and youth have certain rights and interests, some generic and some pertaining to their status in the enhancement/intervention system
- The empowerment of children and youth through promoting their active participation in the planning and decision-making process is a potent process that enhances both the quality of decision-making within the system and the healthy development of those young people served by the system.

With respect to the first point, we acknowledge that there are many people who effectively advocate for young people receiving services from the enhancement/intervention systems. These include parents, caseworkers, caregivers, therapists, etc. However, there are situations in which such parties' ability or effectiveness in advocating for children is limited. For example, parents may be alienated from children because of abusive relationships, or may have lessened capacity to effectively deal with formal institutional systems because of their own personal problems or disadvantaged situations. Caseworkers may be compromised in advocating for youth when, as decision-makers, a best interest test leads them to make decisions that the youth strongly oppose.

Additionally, it is widely recognized that bureaucratic organizations, despite the best efforts of committed people within them, get diverted from the stated service aims of the institution. They become self-serving and at times ineffective in responding to the needs of those the organization is intended to serve. The enhancement/intervention system is vested with far-reaching authority to impact the lives and experiences of the children it serves. It has the potential to make decisions that are far more intrusive and involve far greater curtailment of liberty than would be the case for parents in a normal family setting. The impact of a system with such potential authority can be to disempower children and youth who, by their nature and experiences, already have limited capacity to advance their own cause.

For all of these reasons it was felt important to provide a resource to children and youth receiving enhancement/intervention services that focuses exclusively on protecting their rights and interests and supporting their participation in the system.

Role of the OCYA

The Office was originally established in 1989 through an amendment to the *Child Welfare Act*, and now continues under the *Child, Youth and Family Enhancement Act*. The two primary responsibilities of the Office are:

- To represent individual children and youth served under the *Child, Youth and Family Enhancement Act* and the *Protection of Children Involved in Prostitution Act* (individual advocacy)
- To provide information and advice to the Minister and the Minister's staff with respect to the welfare and interests of, and the provision of services to, the children and youth who receive services under the *Child, Youth and Family Enhancement Act* and the *Protection of Children Involved in Prostitution Act* (systemic advocacy).

The Office carries out the individual advocacy function by protecting the rights and by advancing the interests and viewpoints of young people receiving services. Understanding the absence of decision-making authority on the part of the Advocate, and understanding that the child's right to be heard is not tantamount to a right to decide, are both critical in appreciating the Advocate's role.

If an Advocate is involved with a youth who is able to provide instruction, the Advocate will take a viewpoint focus. The Advocate will align with the youth and assist him or her to participate in the decision-making process toward the outcomes the youth has identified. Based on an essential understanding by all parties that the Advocate has no decision-making authority, the Advocate comes to the process as a partisan support for the youth. The underlying assumption is that decisions will be better informed if made with active reference to the expressed views of the youth, and that the youth's supported participation can assist the youth to be heard by the bureaucracy that has the authority to make life-shaping decisions on his or her behalf.

If an Advocate is involved with a child who is unable to provide instruction, the Advocate will take an interest focus. The focus of advocacy will be to ensure all available information is considered in decision-making processes and that decisions take into account active reference to the young person's interests including those referenced in the "Matters to be considered" section of the *Child, Youth and Family Enhancement Act*.*

* See Appendix C

Systemic advocacy work pools the experience gained from case advocacy activities in identifying and assessing issues and deficiencies in how youth experience services received, and communicating these to those responsible in the service delivery system for the refinement of policy and/or the effectiveness of practice.

Principles and Values

Within the OCYA, the delivery of advocacy services is guided by a set of articulated principles and values. It is expected that these influence not only the structure and operation of the Office in general but also the activity and behavior of individual Advocates. These include the following:

- **Empowerment** – Advocacy's prime focus is the empowerment of the young person to speak for himself and to participate in planning and decision-making
- **Child Focused Practice** – The young person is the client of the Child and Youth Advocate. This requires compassion, respect and empathy for the young person's perspective
- **Advocacy is a Shared Responsibility** – The community's involvement and assumption of responsibility are key considerations. The goal is to involve, empower and support, rather than to replace natural advocates
- **Forgoing the Use of Authority** – An Advocate's effectiveness depends on the quality and cogency of facts, upon persuasion, and upon access to progressive levels of decision-makers and decision-making processes rather than the authority to dictate outcomes. This implies sharing of information, the encouragement of and respect for diversity of opinion, and the absence of a win-lose view of problem-solving
- **Informality** – An informal, non-intrusive style is key to effective advocacy. Informally negotiated, collaborative strategies, at the organizational level closest to the child, are the preferred approaches to problem resolution – not formal or adversarial processes. However, the Advocate's obligation to the young person may require strategies which involve progressively higher levels of organizational authority or which resort to more formal mechanisms such as courts or appeal panels
- **Holistic Perspective** – Decision-making about the life of an individual can benefit from a variety of perspectives, disciplines, and values that consider the whole person in his/her environment.

Child, Youth and Family Enhancement Act

This excerpt from the Act describes the structure and duties of the OCYA.

Office of the Child and Youth Advocate

- (1) The Lieutenant Governor in Council may, on the recommendation of the Minister, appoint a Child and Youth Advocate, who shall hold office for a term not exceeding 5 years.
- (2) The Minister may authorize and provide for the payment of the remuneration and expenses of the Child and Youth Advocate and for the office and staff of the Child and Youth Advocate.
- (3) The Child and Youth Advocate shall
 - (a) advise the Minister on matters relating to the welfare and interests of children who receive services under this Act or the *Protection of Children Involved in Prostitution Act* and the provision of those services;
 - (b) receive and review complaints or concerns that come to the attention of the Child and Youth Advocate respecting children who receive services under this Act or the *Protection of Children Involved in Prostitution Act*;
 - (c) represent the rights, interests and viewpoints of children who receive services under this Act or the *Protection of Children Involved in Prostitution Act*;
 - (d) facilitate the involvement of family or community members in assisting in advocating for a child who is receiving services under this Act or the *Protection of Children Involved in Prostitution Act*;
 - (e) perform additional duties and functions that are conferred on the Child and Youth Advocate by the regulations or that are from time to time assigned to the Child and Youth Advocate by the Minister;
 - (f) submit a report to the Minister every 3 months on the Child and Youth Advocate's activities and observations;
 - (g) prepare and submit annual reports to the Minister respecting the exercise of the duties and functions of the Child and Youth Advocate.
- (4) On receiving a report under subsection (3)(g), the Minister shall lay a copy of the report before the Legislative Assembly if it is then sitting, and if not, within 15 days after the commencement of the next sitting.
- (5) For the purpose of performing the duties and functions of the Child and Youth Advocate, the Child and Youth Advocate may
 - (a) communicate with and visit a child who is receiving services under this Act or the *Protection of Children Involved in Prostitution Act* or a guardian or other person who represents the child;

- (b) have access to information relating to a child that is in the possession of a director under this Act or under the *Protection of Children Involved in Prostitution Act* or other person or agency providing services to a child on behalf of a director under this Act or under the *Protection of Children Involved in Prostitution Act*;
 - (c) at the request of a child who is receiving services under this Act or the *Protection of Children Involved in Prostitution Act*, the Minister or any person acting on the child's behalf, review and make recommendations regarding any matter relating to the provision of services to the child under this Act or the *Protection of Children Involved in Prostitution Act*;
 - (d) provide information relating to, speak on behalf of and otherwise represent a child who is receiving services under this Act or the *Protection of Children Involved in Prostitution Act* when major decisions relating to the child are being made under this Act or the *Protection of Children Involved in Prostitution Act*;
 - (e) on the initiative of the Child and Youth Advocate or at the request of a child who is receiving services under this Act or the *Protection of Children Involved in Prostitution Act*, assist in appealing or reviewing a decision of a director relating to the child;
 - (f) provide assistance and advice to an Appeal Panel or a Court with respect to a child who is receiving services under this Act or the *Protection of Children Involved in Prostitution Act*.
- (6) The Child and Youth Advocate may delegate any duty or function conferred or imposed on the Child and Youth Advocate under this Act, the *Protection of Children Involved in Prostitution Act* or the regulations under either Act in respect of a child
- (a) to a person employed or engaged in the administration of this Act or the *Protection of Children Involved in Prostitution Act*,
 - (b) to a person who provides care to the child, represents the child or is concerned about the welfare of the child, or
 - (c) to a family or community member referred to in subsection (3)(d) who is assisting in advocating for the child.

RSA 2000 cC-12 s3;2003 c16 s6;2004 c16 s3

Child, Youth and Family Enhancement Act

This excerpt from the Act describes the philosophical and value framework to be applied when any decision is made in relation to children who are considered to be in need of protection. It is important in that it not only sets out the overriding "best interest test" but also provides more specific considerations to help guide decision-making.

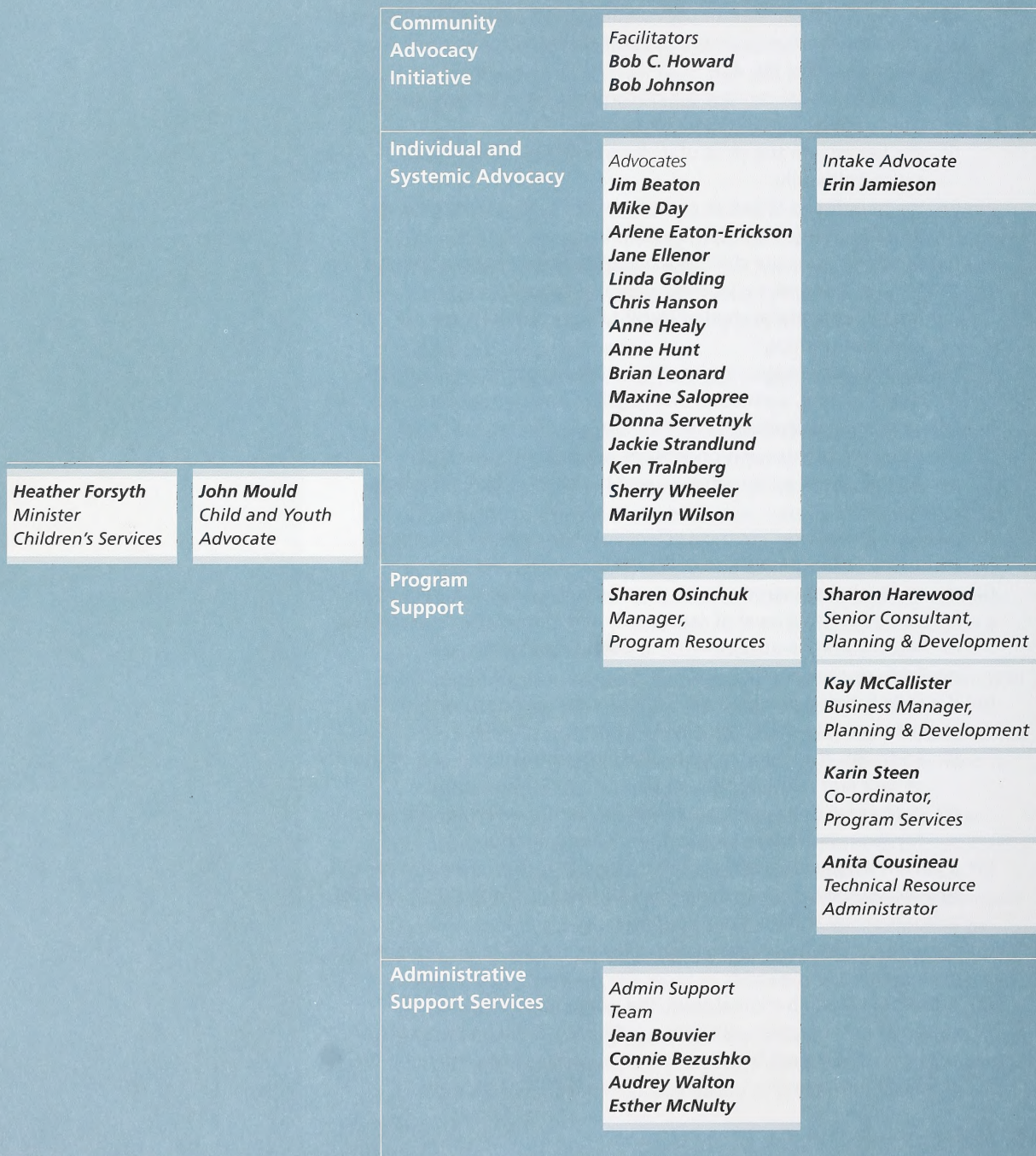
Matters to be considered

- 2 If a child is in need of intervention, a Court, an Appeal Panel and all persons who exercise any authority or make any decision under this Act relating to the child must do so in the best interests of the child and must consider the following as well as any other relevant matter:
 - (a) the family is the basic unit of society and its well-being should be supported and preserved;
 - (b) the importance of stable, permanent and nurturing relationships for the child;
 - (c) the intervention services needed by the child should be provided in a manner that ensures the least disruption to the child;
 - (d) a child who is capable of forming an opinion is entitled to an opportunity to express that opinion on matters affecting the child, and the child's opinion should be considered by those making decisions that affect the child;
 - (e) the family is responsible for the care, supervision and maintenance of its children and every child should have an opportunity to be a wanted and valued member of a family, and to that end
 - (i) if intervention services are necessary to assist the child's family in providing for the care of a child, those services should be provided to the family, insofar as it is reasonably practicable, in a manner that supports the family unit and prevents the need to remove the child from the family, and
 - (ii) a child should be removed from the child's family only when other less disruptive measures are not sufficient to protect the survival, security or development of the child;
 - (f) subject to clauses (e) and (g), if a child has been exposed to domestic violence within the child's family, intervention services should be provided to the family in a manner that supports the abused family members and prevents the need to remove the child from the custody of an abused family member;
 - (g) any decision concerning the removal of a child from the child's family should take into account the risk to the child if the child remains with the family, is removed from the family or is returned to the family;

- (h) if it is not inconsistent with protecting the survival, security or development of a child who is in need of intervention, and appropriate community services are available, the child or the child's family should be referred to the community for services to support and preserve the family and to prevent the need for any other intervention under this Act;
 - (i) any decision concerning the placement of a child outside the child's family should take into account
 - (i) the benefits to the child of a placement within the child's extended family;
 - (ii) the benefits to the child of a placement within or as close as possible to the child's home community,
 - (iii) the benefits to the child of a placement that respects the child's familial, cultural, social and religious heritage,
 - (iv) the benefits to the child of stability and continuity of care and relationships,
 - (v) the mental, emotional and physical needs of the child and the child's mental, emotional and physical stage of development, and
 - (vi) whether the proposed placement is suitable for the child;
- (j) the provision of intervention services is intended to remedy or alleviate the condition that caused the child to be in need of intervention;
- (k) intervention services are most effective when they are provided through a collaborative and multi-disciplinary approach;
- (l) if a child is being provided with care under this Act, the child should be provided with a level of care that is adequate to meet the needs of the child and consistent with community standards and available resources;
- (m) if a child is being provided with care under this Act, a plan for the care of that child should be developed that
 - (i) addresses the child's need for stability, permanence and continuity of care and relationships, and
 - (ii) in the case of a youth, addresses the youth's need for preparation for the transition to independence and adulthood; ⑤
- (n) a person who assumes responsibility for the care of a child under this Act should endeavour to make the child aware of the child's familial, cultural, social and religious heritage;
- (o) there should be no unreasonable delay in making or implementing a decision affecting a child;
- (p) if the child is an aboriginal child, the uniqueness of aboriginal culture, heritage, spirituality and traditions should be respected and consideration should be given to the importance of preserving the child's cultural identity.

Office of the Child and Youth Advocate

■ Organizational Chart 2004-2005





Child & Youth Advocate

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